IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY EIGHTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 24421 of 2004

Between:

Bhogi Kannayya Raju, S/o.Bhogi Appa Rao,
R/o.Burja Village & Mandal, Srikakulam Dist.

..... PETITIONER

AND

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1 The Joint Collector, Srikakulam, Srikakulam District.
2 The Revenue Divisional officer, Srikakulam, Srikakulam Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly a writ in the nature of writ of Mandamus declaring the proceedings Rc.No.2443/2003-H dated 5-1-2004 of the Revenue Divisional officer Srikakulam as illegal and arbitrary and consequently set aside the same.

Counsel for the Petitioner: MR.A.RAVI SHANKAR

Counsel for the Respondents.: GP FOR CIVIL SUPPLIES

The Court made the following :

ORAL ORDER:

The authorization of the petitioner was suspended by the second respondent through order dated 5-1-2004 on the allegation that the petitioner misutilised the rice meant for food for work and that he was not available in the village at the time of inspection. Aggrieved thereby the petitioner preferred an appeal before the first respondent. The appeal was disposed of on 17-2-2004 directing the second respondent to pass orders in the main proceedings within 30 days. The petitioner contends that no orders have been passed so far. Hence, he challenges the order passed by the second respondent.

Heard learned counsel for the petitioner and learned Government Pleader for Civil Supplies.

The petitioner availed the statutory remedy of appeal under Clause 20 of the A.P. State Public Distribution System Control Order, 2001, aggrieved by the order of suspension. After referring to the factum of filing of the appeal, the first respondent passed orders on 17-2-2004 with the following observations.

> "The matter has been examined, the Appeal petition is taken on file and the stay petition is rejected.
>
> Remanded the case to the Revenue Divisional Officer, Srikakulam with a direction to dispose of the case as per law within 30 days."

To say the least, the first respondent did not follow the basic principles of hearing for disposal of the appeals. On the one hand the order reads that the appeal is taken on file and on the other hand, it indicates that the case is remanded to the second respondent with a direction to dispose of the case within 30 days. Further the question of remanding a matter by an appellate authority would arise, if only the order under appeal is set aside. It is a case either of lack of experience on the part of the officer, who passed the order, or exhibition of indifference while exercising the appellate powers.

Coming to the order passed by the second respondent on 5.1.2004, it is evident that he issued a show cause notice to the petitioner directing him to explain as to why action shall not be taken. The petitioner submitted his explanation on 21-10-2003. After referring to the charges, show cause notice and the explanation the first respondent passed orders with the following observations.

> "In this connection remarks of the Mandal Revenue Officer, Burja has called for on the statement of Sri B. Kannayyaraju, F.P. Shop Dealer, Burja.III. The Mandal

Revenue OFficer, Burja has submitted his remarks that the dealer is misutilised the food for work and ISLs Rice.

In the above circumstance reported by the Mandal Revenue Officer, Burja, since 4 months the F.P. Shop dealer has not turned up, committed irregularities and violated the APSC (RDCS) 2001 Authorisation conditions, pending enquiry the authorization of Sri B.Kannayyaraju, F.P. Shop Dealer, Burja.III of Burja Mandal is hereby suspended."

It discloses that except relying upon the remarks offered by the Mandal Revenue Officer the second respondent did not apply his mind to the facts of the case. The observations made in one paragraph do not correlate with the other. Sentences are grammatically unsound. Once the order of suspension was preceded by a show cause notice, the question of suspending the authorization pending enquiry does not arise. The whole episode discloses that the order passed by the respondents do not conform to the relevant provisions or the settled procedure.

In **JOINT COLLECTOR, KURNOOL V. NEELIMA** the Division Bench of this court held that the suspension of authorization of the fair price shop dealer cannot be continued beyond 90 days except where extraordinary circumstances exist.

For the foregoing reasons, the Writ Petition is allowed and the order dated 5-11-2004 passed by the first respondent is set aside. There shall be no order as to costs.

L. Narasimha Reddy, J.

28th December, 2004

js.

To

1 The Joint Collector, Srikakulam, Srikakulam District.
2 The Revenue Divisional officer, Srikakulam, Srikakulam Dist.

3 Two CCs to G.P for Civil Supplies, High Court of A.P. Buildings,

Hyderabad (OUT)

4 Two CD Copies.